IN THE HIGH COURT OF DELHI

Crl.M.C. No.601/2005

Anand Srivastava ..... Petitioner
! through: Mr. V.Srivastava, Advocate

VERSUS

$ State & Ors. ..... Respondents
^ through: Mr. Saurabh and Mr. Sanjay Katyal, Advocate for the respondent

% DATE OF DECISION: 25.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. On 23.2.2005 while issuing notice in Crl.M.C. No.601/2005 following order was passed:-

> "Crl.M.C. No.601/2005 and Crl.M.A. No.2022/2005
>
> The petitioner is the Managing Director of Intercorp Industries Ltd. Learned counsel for the petitioner says that although the offence alleged against the petitioner relates to a balance-sheet, the balance-sheet has not been placed before the Court along with the complaint. The complaint says that the balance-sheet is annexure-3 to the complaint. Learned counsel for the petitioner says that there is no annexure-3 or in other words annexure-3 has not been filed before the learned Metropolitan Magistrate. It is also submitted that the report under Section 209-A of the Companies Act has also not been placed before the learned Trial Court.

List on 13.7.2005.

Trial Court record be summoned two days prior to the next date of hearing.

Till the next date of hearing personal appearance of the petitioner before the trial court is exempted provided he is represented by a counsel, subject to the condition that he will appear in person whenever required by the trial court for a specific purpose."

2. Trial Court record has been received. It has been perused.

3. Complaint in question under Section 211 of the Companies Act has been filed by the Registrar of Companies against Anand Srivastava stated to be the Managing Director of M/s.Intercorp Industries Ltd.

4. In the complaint there is reference to as many as 6 annexures.

5. Indeed, not a single annexure has been filed along with the complaint.

6. I note that certain documents have been filed but none has been marked as an annexure.

7. From a perusal of the complaint it is apparent that case of the prosecution against the petitioner is that as Managing Director of the company he was responsible for compliance with the provisions of Section 211 of the Companies Act 1956. That an annual return was filed up to 22.8.1998. That the same revealed that the petitioner was the Managing Director. That the return

was Annexure-2 to the complaint.

8. No such return marked as Annexure-2 has been filed along with the complaint.

9. It is further pleaded in the complaint that the inspection of the books of accounts and records of the company was conducted by one Shri J.N.Tiku whose report revealed certain irregularities. That the irregularities pertained to the balance-sheet as on 31.3.1999 marked as Annexure-3 to the complaint.

10. I note that no document has been marked as Annexure-3 to the complaint.

11. I need not note anything further for the reason averments have been made thereafter to a stated show cause notice, an order authorizing the filing of the complaint and a receipt to the show cause notice; documents are referred to as Annexure-4 to Annexure-6. None have been filed. I do not find in the record of the trial court any document marked as Annexure-4, Annexure-5 or Annexure-6.

12. In that view of the matter, though unfortunately this Court is left with no option but to quash the impugned summoning order dated 18.10.2001.

13. But before formally quashing the same I would be failing not to note a trend which is unfortunately emerging. A pre-formatted cyclo-styled proforma order having blank spaces filled up by hand has been used as a summoning order.

14. It reveals a non-application of mind.

15. Had the learned Judge been vigilant and had perused the complaint it would have dawned upon him that documents marked and referred to as Annexure-1 to Annexure-6 along with the complaint have not been filed as marked annexures. The complaint could have been rejected there and then.

16. Be that as it may, petition stands disposed of quashing the summoning order dated 18.10.2001.

17. LCR be returned.

September 25, 2007 **PRADEEP NANDRAJOG, J.**
dk